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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 63

THE ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. Fraser, *et al.*, *Petitioners.*

vs.

O. E. SWAN, *et al.*, *Respondents.*

No. 64

F. J. WILLIAMS, *et al.*, *Petitioners.*

vs.

O. E. SWAN, *et al.*, *Respondents.*

REPLY BRIEF FOR PETITIONERS

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

V. C. SHUTTLEWORTH
H. E. WILMARTH,
Cedar Rapids, Iowa.
W. A. ENDLE,
Cleveland, Ohio.
EVERETT L. GORDON,
Chicago, Illinois.
Attorneys for Order of Railway Conductors of America and Brotherhood of Railroad Trainmen, Petitioners.
LEO J. HASSENAUER,
Chicago, Illinois.
Attorney for F. J. Williams, William Bishop, Paul M. Carter, M. J. Leach, and Fred J. Lewis, Petitioners.

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The Order of Railway Conductors of America, H. W. Fraser, President and F. H. Nemitz, Senior Vice-President; and Brotherhood of Railroad Trainmen, A. F. Whitney, President and S. R. Harvey, Assistant President, *Petitioners.*

v.

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox, *Respondents.* Railroad Yardmasters of America, Great Northern Railway Company and Southern Pacific Company, *Intervenor-Respondents.*

F. J. Williams, William Bishop, Paul M. Carter, M. J. Leach, and Fred Lewis, Individually, and as Members of The National Railroad Adjustment Board, *Petitioners.*

v.

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox, *Respondents.* Railroad Yardmasters of America, Great Northern Railway Company and Southern Pacific Company, *Intervenor-Respondents.*

REPLY BRIEF FOR PETITIONERS.

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FOREWORD

The argument of the carrier respondents is interlaced with numerous statements unsupported by the record or entirely irrelevant to the issue before the court. The record and the exhibits will demonstrate this fact and only a few need be noted.

At the outset the carrier respondents say:

> "This is primarily a contest between rival labor organizations whose memberships include yardmasters." (Respondents' Brief Pg. 4.)

This statement, labored for four pages, is entirely unwarranted and is not supported by the record. Since July 11, 1938, the intervenor, Railroad Yardmasters of America, has submitted yardmaster disputes to the Fourth Division. While unauthorized, this procedure was immaterial to petitioners so long as it was confined to members of the Railroad Yardmasters of America and cases in which petitioners had no interest. However, when the carrier members of the First Division on August 28, 1941 (R. 186-188), refused to set yardmaster disputes submitted by petitioners for hearing, the petitioners were compelled to bring this action against the Adjustment Board or forfeit the statutory rights of yardmasters represented by them.

Respondents, again seeking to emphasize extraneous matters, stress the lack of the representation of the Railroad Yardmasters of America on the First Division. What conceivable relevance does this have to the issue of statutory interpretation? The congressional hearings on the 1934 amendments to the Railway Labor Act reflect that Congress was well aware that numerous labor organizations would not be represented on the several divisions of the Adjustment Board. This cynical commentary by the carriers on the work of the Adjustment Board, and its utter irrele-

vance, indicates the lengths to which respondents are driven in an attempt to support the decision below.

REPLY ARGUMENT

I.

In their argument (P. 12), the carrier respondents state that:

> "The statute does not refer to yardmasters by name in the designation of crafts of employees whose disputes are embraced in the jurisdiction of the First Division."

Neither does the statute refer *by name* to numerous other road and yard crafts whose disputes are properly submitted to the First Division under the general designation of crafts within the jurisdiction of that division. For the convenience of the court, we list in parallel columns the statutory designation and the crafts over whose disputes the First Division has assumed jurisdiction.[1]

STATUTORY DESIGNATION	CRAFTS INCLUDED IN FIRST DIVISION
Train and Yard Service Employees	Engineers and Helper Engineers
Engineers	Firemen
Firemen	Conductors
Hostlers and Outside Hostler Helpers	Ticket Collectors
Conductors	Pilots
Trainmen	Brakemen
Yard Service Employees	Flagmen
	Baggagemen
	Yardmasters

[1] See Published Awards of the First Division of the National Railroad Adjustment Board and Index thereto, Library of Congress, Washington, D. C., and page 23, Footnote 23, of Petitioners' Brief.

Yard Conductors and Yard Foremen
Outside Hostlers
Inside Hostlers
Yard Helpers
Car Retarder Operators
Switchtenders
Engine Herders

Yardmasters are a separate and distinct craft of rail employees; so are yard foremen; so are switchtenders; so are hostlers and other yard crafts. There are not "two" crafts — yardmasters and "yard-service employees" — as respondents assert at page 48 of their brief, but numerous separate yard crafts employed in yard service. By reason of schedule agreements, each of these crafts have distinct duties and the carriers are precluded from causing one craft to impinge on the work of another craft in violation of their agreements.

The basic effort of respondents is an attempt to distinguish yardmasters from other yard crafts on the ground that they are officials — not "employees." The inherent obstacle to this argument is that the Interstate Commerce Commission has defined them as "subordinate officials"[2] and Section 1, Fifth, of the Railway Labor Act defines the term "employee" to include subordinate officials.

In view of the statutory definition of "employees," of what aid to a solution of the problem before this court is it to assert that "yardmasters are an independent craft" (with which we agree) and that "the essential distinction" between yardmasters and yard service employees is "in terms of the supervisory service performed by the first and the yard service performed by the second"? (Pg. 25 of carrier respondents' brief.) The so-called distinction in nowise demonstrates that yardmasters are not in yard service merely because they are supervisory employees. It may as

[2] Ex Parte 72, R. 201, Intervenor's Exhibit No. 5).

well be argued that a passenger conductor is not in "road service" simply because he has supervision over the fireman, the engineer and the brakeman; or that the yard conductor is not in "yard service" simply because he directs and supervises the switch engine crew.[3]

It is fruitless to attempt to distinguish the jurisdiction of the several divisions of the Adjustment Board over "employees of carriers" by attempting to distinguish "employees" who have supervisory duties and those who do not have supervisory duties. The argument arrives nowhere.

The significant point in the carrier respondents' brief is that it does not deny the petitioners' contention that yard work or yard service refers to *yard operation and the switching of trains in a railroad yard* (Petitioners' brief pages 42-47). Nor do respondents deny that the preponderant duties of yardmasters are in yard operation and switching service. Nor do they deny that yardmasters are "operating employees."[4] Yardmasters work in a "yard," are operating "employees" engaged in yard operation and quite obviously, we submit, are "yard-service employees" within the clear wording of Section 3, First (h) of the Act.

It is these criteria that place an "employee" in "yard service" and not the circumstance whether his craft is an independent one, as are numerous other yard crafts, or whether his work is of a supervisory nature.

Under the title "Respondents' Documentary Evidence of the Meaning of the Railroad Term Embraced in the Statute," the carrier respondents quote excerpts from several submissions to the Adjustment Board (p. 20-24). These isolated examples of terminology in another context combed from literally thousands of submissions to the Adjust-

[3] See page 48 of Petitioners' Brief for definition of duties of yard conductors as contained in the *Dictionary of Occupational Titles* issued by the United States Department of Labor.

[4] In fact the carrier respondents concede on page 14 of the Brief of Respondents in opposition to the Petition for Certiorari that yardmasters are operating employees.

ment Board in nowise support the respondents' contention of an established trade use of the term "yard-service employees" as exclusive of yardmasters. Neither the trial court not the Circuit Court of Appeals deemed this evidence of sufficient weight even to mention it in support of their conclusions.

Apart from the numerous examples of the recognition in the trade that yardmasters are in yard service, referred to in petitioners' brief at pages 37-51, the conclusive answer is that the carriers themselves have repeatedly recognized the fact that yardmasters are in yard service in submissions to the First Division of the Adjustment Board. Only a few examples need be cited. In Award No. 1649 (R. 210, plaintiffs' Exhibit K), one McMartin complained of his demotion from the position of yardmaster and his dispute was submitted to the First Division. The Chicago & Northwestern Railway Company defended the claim *but raised no question concerning the jurisdiction of the First Division.* In Award No. 2710 (Appendix III, Petitioners Brief), the Denver and Rio Grande Western Railroad Company *joined with the organization* in submitting a yardmaster dispute to the First Division. Again in Award No. 2712 (R. 75) and in Award No. 2713 (R. 210; Plaintiffs' Exhibit K), the Denver and Rio Grande Western Railroad Company *joined with the organization* in submitting two yardmaster disputes to the First Division. In Award No. 1896 (R. 210, plaintiffs' Exhibit K), two yardmasters complained of wrongful displacement as yardmasters. The Chicago, Rock Island and Pacific Railway Company and the Chicago, Rock Island and Gulf Railway Company, while contending that the Adjustment Board was without jurisdiction because of the claim that the organization did not represent yardmasters, made no contention that yardmasters were not in yard service. *On the merits*, the carriers contended that yardmasters were officials. The First Division overruled the carriers' contention and sustained the claim. In this Award (No. 1896), dated April 14, 1937, the

carrier members of the First Division dissented from the conclusion of the majority *but raised no question that the First Division did not have jurisdiction of the dispute on the ground that yardmasters were not in yard service.* And in Award No. 4117 (R. 210, Plaintiffs' Exhibit K), the Southern Pacific Company defended a yardmaster dispute submitted to the First Division without any objection to the jurisdiction of that Division over yardmaster disputes.

The first instance of a carrier challenge to the jurisdiction of the First Division over yardmaster disputes occurred subsequent to the collusive decree in Chancery No. 16031 (R. 159).

It is of the greatest significance that the carriers, the labor organizations submitting yardmaster disputes to the First Division, and the carrier and labor representatives on the First Division did not question the jurisdiction of that Division over yardmaster disputes prior to 1938; and the First Division continued to decide yardmaster disputes after 1938 (See Award No. 4117 decided August 30, 1939 — R. 210, Plaintiffs' Exhibit K). Had there been any general and recognized usage in the industry, as respondents contend, that yardmasters were not in yard service, *is it conceivable* that the carriers themselves would not have immediately questioned the jurisdiction of the First Division to hear yardmaster disputes?

The sole evidence in this record to support the contention of respondents of a general recognized usage in the railroad industry that yardmasters are not yard service employees is the testimony of three interested witnesses at the trial of this case. The isolated excerpts from a few submissions to the Adjustment Board taken from an entirely different context in no sense support their contention. It is submitted that the carriers' contention is entirely refuted by the fact alone that the carriers *joined with the organizations* in submitting yardmaster disputes to the First Division, raised no question concerning the jurisdiction of that Division, and that it did not occur to the carrier representa-

tives on the First Division to raise the question prior to 1938. When the question was raised in 1938 by the carrier representatives, it is not an unreasonable inference to conclude that it was for reasons entirely different from any conviction that yardmasters were not in yard service.

At page 26 of their brief, the carrier respondents refer to excerpts from *Ex Parte No. 106*.[5] The short excerpts quoted may be misleading and we respectfully refer the court to the Commission's discussion of "Group V, Transportation (other than train, engine and yard)" in which the Commission stated:

> "This group comprises employees in transportation service not directly connected with yard operation or the running of trains and engines."[6]

Following the discussion of this group the Commission discusses the employees in transportation service under the heading "Group VI, Transportation — Train, Engine and Yard." In the discussion under Group VI, the Commission refers to yardmasters, clearly indicating that it regarded this group as among the yard transportation employees. The excerpt quoted by the carrier respondents has reference merely to certain yard crafts and is obviously not intended to be inclusive of all yard crafts or to indicate that yardmasters are not engaged in yard transportation service.

It is also of no significance that the United States Railroad Labor Board in 1921 classified yardmasters as in supervisory service. This in no way excludes their employment in yard service. Yard service or yard work encompasses all employees whose preponderant duties are concerned with *yard operation and the movements of trains and engines in the yard*.

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[5] House of Representatives Document No. 496, Library of Congress, Washington, D. C.

[6] Emphasis in this brief is added unless otherwise indicated.

II.

At page 36 of their brief, the carrier respondents contend that the historical background of the Railroad Adjustment Board should not be considered in determining the jurisdiction of the First Division. The point that respondents are unable to answer, and therefore ignore, is that the 1934 amendments to the Railway Labor Act defined the jurisdiction of the First Division to conform to that of the four regional boards which had previously heard disputes of the operating employees. The First Division of the Adjustment Board in its First Annual Report to Congress stated:

> "The First Division of the National Railroad Adjustment Board *took over the work of the four regional boards* * * *."

The work of the four regional boards included decisions of many yardmaster disputes (See Record 207-209, Plaintiffs' Exhibits D, F, G, H, I & J). The First Division in fact took over the work of the four regional boards *including yardmaster disputes* (R. 210, Plaintiffs' Exhibit K; R. 37, 52, 75, Exhibits E, F & G; Award 2710, Appendix III of Petitioners' Brief).

In an attempt to refute the force of the historical background of the yardmaster disputes before the Adjustment Board, the carrier respondents say:

> "Large numbers of yard service employees, such as those belonging to the Switchmen's Union of North America, were not subject to the jurisdiction of the train service boards of adjustment, and only the comparatively few yardmasters belonging to the signatory organizations were subject to that jurisdiction." (P. 47-48.)

The assertion of respondents, above quoted, that few yardmasters belonged to the train service organizations

(which include petitioners) prior to 1934 is without foundation in this record. Also, the carrier respondents' statement on pages 8 and 9 of their brief that "petitioners' representation of yardmasters prior to 1934 was insignificant" has no support in the record. These statements, and similar ones that occur throughout the respondents' brief, are made without citation of authority or reference to the record. The only showing in the record as to the relative representation of yardmasters by rail employee organizations is that of July 8, 1942, the date on which the stipulation was executed (R. 162, 170). The record is barren of information as to the relative proportion of yardmasters represented by any labor organization prior to this date.

The fact that respondents have apparently felt compelled to resort to assertions unsupported by the record illustrate the weakness of their position. In one breath they seek to emphasize the relative labor affiliations of yardmasters, and in the next they say that the jurisdiction of the Adjustment Board is defined in terms of specified crafts "regardless of the labor affiliations of such employees." (P. 50, Carrier Respondents' Brief).

Possibly some yardmasters did not submit their disputes to the regional boards of adjustment in the period from 1921 to 1934, although the record leaves it a matter for speculation as to whether any large number of yardmasters were without representation before the regional boards. The record does show that the regional boards heard yardmaster disputes and that the First Division of the Adjustment Board took over the work of the regional boards, including yardmaster disputes, and heard and adjusted such claims until the present controversy arose. It is, therefore, difficult to understand the respondents' contention that the historical background of the Adjustment Board should be ignored entirely in determining the issue under consideration.

III.

In division 3 the carrier respondents assert that:

> "Any consideration of the administrative action of the (Adjustment) Board in this matter necessarily involves an examination of the action of its divisions, First and Fourth, because both have dealt with yardmaster disputes." (Pg. 53.)

The consideration of yardmaster disputes by the Fourth Division, however, has been under the compulsion of the collusive decree in Chancery No. 16031 issued July 11, 1938. *Prior to that date*, the Fourth Division was deadlocked.

As to the awards of the First Division, this court is respectfully referred to Petitioners' Exhibit K, Record 210, showing the awards of the First Division in yardmaster disputes. It is submitted that respondents are grasping at straws to attribute these awards to the oversight not only of the ten practical railroad men on the First Division but of the several carriers who participated in the submission of these cases to the First Division.

On page 9 of their brief, carrier respondents say:

> "The First Division has never discussed the jurisdictional question here involved, or made a ruling thereon, in any award rendered by it."

As to this statement, we respectfully refer this court to the discussion of Award Nos. 2710, 2711, 2712 and 2713 at pages 33-34 of petitioners' brief. The issue was discussed in the consideration of these awards and ruled on.

The respondents admit that some of these awards involve yardmasters but attempt to distinguish others as not involving the yardmaster's agreement. The purported distinction is without foundation. It is impossible for the First Division to rule on a claim to the yardmaster's position without also passing on the right of the yardmaster incumbent under yard schedules.

In actual practice, the agreement concerning rules and rates of pay governing yardmasters is included with the other yard crafts where yardmasters are represented by the train service organizations. This practice is illustrated by Decision No. 84 of the Train Service Board of Adjustment for the Western Region (R. 209, Plaintiffs' Exhibit J). In that decision the Order of Railway Conductors and the Brotherhood of Railroad Trainmen contended that:

> "Organizations contend that inasmuch as the rates of pay covering yardmasters and assistant yardmasters have heretofore been carried in Article 1, **Schedule of Pay for Yardmen**, effective December 1, 1917, and all previous yard schedules, that neither Supplement 16, 25 nor United States Labor Board Decision No. 2, eliminated them therefrom.
>
> Organizations further contend that such increases granted by the General Orders, etc., should be added to the rates in Article 1, covering yardmasters, and assistant yardmasters and continued in the Schedule."

In respect to the respondents' discussion on page 45 of Decision No. 2 of the United States Railroad Labor Board, the court is respectfully referred to the decision of the Western Train Service Board of Adjustment in Decision No. 84 quoted above in which the Board stated:

> "There is nothing in Supplements No. 16, 25, or Decision No. 2 of the United States Railroad Labor Board that eliminates yardmasters or assistant yardmasters' rates of pay from **the yardmen's schedule**; neither is the question of jurisdiction referred to in the Supplements or Decision No. 2.
>
> The Board therefore decides that the rates of pay of yardmasters and assistant yardmasters should be continued in the schedule."

The term "yardmen," while sometimes used to denote the men under the yardmaster, is also a general term often

used to designate all yard crafts including the yardmaster craft, as shown by the inclusion of rules governing yardmasters rates of pay in the "Yardmen's Schedule."

Also, as shown by Decision 84 of the Western Train Service Board quoted above, Decision No. 2 of the United States Railroad Labor Board did not exclude yardmasters as "yardmen." Furthermore Decision No. 2, cited by the carrier respondents (their brief p. 45), in which "Yardmasters and Assistant Yardmasters" were listed under the title of "other Supervisory Forces," was decided July 20, 1920. The decision of the Interstate Commerce Commission in Ex parte No. 72 holding yardmasters and assistant yardmasters "* * * excepting general yardmasters at large and important switching centers where of necessity such general yardmasters are vested with responsibilities and authority that stamp them as officials" to be "subordinate officials" and hence "employees" under the Railway Labor Act was decided Nov. 24, 1920, or three months later.

In Vol. III of the Decisions of the United States Railroad Labor Board, p. 1146, under the heading "Introduction to General Indices" is an explanatory statement of the Board for the "Table of Main Classifications" which follows. In this table is shown as a main classification "Yard Service p. 1181," and at p. 1181 of the Index to Decisions under the heading "Yard Service" are shown various crafts including "Yardmasters." At p. 1174 of the same Index to Decisions, under the main heading "Rate of Pay," appears a sub-heading "Schedule Rules—affecting pay" and under this appears a further sub-division "Yard Service Crews" under which is shown "Yardmasters—Decision 1411—p. 984."

We submit that the foregoing establishes without question that the United States Railway Labor Board regarded, treated and classified "Yardmasters" as one of the crafts in "yard service."

The respondents (carrier members brief p. 49, Railroad Yardmasters brief p. 29) quote from the testimony of

George M. Harrison in the hearings before the House Committee at the time of the 1934 amendments. His statements fortify petitioners' contention that "Yardmasters" are included in the general term "yard service employees" as used in the Act.

Respondents concede that:

(1) "Yardmasters are properly included among the operating employees" (Carrier brief in opposition to writ, P. 14), and

(2) "* * * That the work of a Yardmaster is more closely allied to that of the man engaged in train and engine service than it is with any other group or class of employees in the yard." (R. 193, 196 and 197.)

When Mr. Harrison made the statements before the House Committee which Respondents quote, i.e.:

> "Division 1 shall have jurisdiction over controversies affecting the train engine and *yard service employees*. That is, the switchmen and the engineers and the firemen and conductors, and the trainmen *and other related train service employees*."

He quite naturally was referring generally to the operating group (which respondents concede to include yard-masters) engaged in the handling and movement of trains in road and yard service.

He used the term "switchmen" which craft is not mentioned *by name* in the Act. Yet the First Division hears disputes involving switchmen. He did not refer to "hostlers and outside hostler helpers" which crafts are those expressly named in the Act over which the First Division has jurisdiction.

The labor unions representing, generally, the operating groups are sometimes referred to as the "Train Service Organizations (engineers, firemen, hostlers, conductors, trainmen and yard service employees)." (Inquiry of the Attorney General Committee, National Railroad Adjustment Board compiled by Harry E. Jones, p. 81).

In the report of the Eight-Hour Commission to the President in December of 1917 reference was made to "train operation" and the report stated:

> "Turning to the second aspect of *train operation*—the kind of work involved—this also falls into two broad divisions, *yard and road service.*"[7]

In this same Eight-Hour Report under the title "Overtime in Yard Service," it is stated:

> "Yard service, it must be remembered, consists of a continuous succession of pieces of work—the classification, shifting and re-assembling of cars. None of these tasks can be stopped arbitrarily * * * The *Yardmaster*, perhaps, in the late afternoon, thinking his yard well cleaned up, is advised of the arrival of heavy trains of perishable freight, livestock and the like. The yard must be cleared at any cost."[8]

The respondent carrier members assert (their brief p. 46) that it was only after October 13, 1922, the date of Decision 1266 of the United States Railway Labor Board, that there were "standard rules" governing working conditions of Yardmasters. Decision No. 84 Case No. 96 of the Western Train Service Board (Plaintiffs' Exhibit J, R. 209) shows that "rates of pay covering Yardmasters and Assistant Yardmasters have heretofore been carried in Article 1, Schedule of Pay for Yardmen, effective December 1, 1917, and all *previous yard schedules*, [and] that neither Supplements, 16, 25, nor United States Labor Board Decision No. 2, eliminated them therefrom." The claim was sustained. See also Decision No. 846, Case No. 662 (R. 209, Plaintiffs' Exhibit J) and awards No. 2490 and 2491 which indicate that yardmasters were represented by petitioners as early as 1906. (R. 210, Plaintiffs' Exhibit K).

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[7] The Report of the Eight-Hour Commission set out in Appendix VII "*Employment Conditions in Train and Yard Service under the Eight-Hour Law*," by Victor S. Clark, Ph.D., p. 383.

[8] "*Railway Schedules and Agreements*," by William Q. Ripley, Ph.D., at page 298, Appendix VI, Report of Eight Hour Commission.

The carriers had, prior to the decision in Ex parte 72, decided November 24, 1920, resisted the growing unionization of yardmasters on the ground they were "supervisory officials", but as shown above, yardmasters had had representation rights prior to 1920.

Respondents seek to place an unwarranted emphasis upon an isolated excerpt from the testimony of petitioners' witness Nemitz. They quote (Carriers Brief p. 20):

> "Q. * * * Can you agree with the witnesses who were on the stand this morning, at least to this extent, that in railroad parlance 'yard service employees' and 'Yardmen' and 'Yard crews' *generally speaking* mean the same thing?
>
> "A. Yes, sir."

This witness had served on the Train Service Board of Adjustment for the Western Region. This is the same Board shown by the cases cited supra from Plaintiffs' Exhibit J (R. 209) that had considered contracts covering Yardmasters in the schedule for yardmen. He was "speaking generally". He was the same witness who later in the same cross examination said that in his opinion Yardmasters and Assistant Yardmasters were included in the term Yardmen (R. 212-213).

The carriers have recognized the term "yardmen" as a general term frequently used to embrace all yard crafts including yardmasters, and as noted at page 12 of this brief it is common practice to include the rules governing yardmasters under the "Schedule of Pay for Yardmen." (R. 209, Plaintiffs' Exhibit J.) Further recognition by the carriers that yardmasters are employed in yard work will be observed in Award No. 4117 (R. 210, Plaintiffs' Exhibit K) wherein the carrier, Southern Pacific Company, stated:

> "On November 20, 1924, when the unification of the switching facilities at El Paso was placed in effect, **assistant yardmasters** employed by Southern Pacific (Pacific lines) at El Paso were the only yardmasters represented by an organization, and that only to the extent shown in Section (c), Article 1, and Article 18,

> **Yard Agreement**, former E. P. & S. W. Railroad (now a part of the Southern Pacific (Pacific lines)) * * *."

The First Division of the Adjustment Board has also recognized Yardmasters as "Yardmen" (R. 210 Plaintiffs' Ex. K, awards 2490 and 2491). In award No. 2491 the *joint* submission of the Brotherhood of Railroad Trainmen and the Denver and Rio Grande Western Railroad Company reads in part as follows:

> "E. J. Egger . . . claimed the difference in pay of Engine Foreman and General Yardmaster for the reason the position of **general yardmaster** was not bulletined as provided in Article 14(f), and filed under the provisions of 14(a) of the **Yardmen's schedule.**"

In its award in No. 2491 the First Division of the Adjustment Board on January 17, 1938, stated in part as follows:

> "It being shown that position of general **yardmaster** at Grand Junction is included within the scope of agreement between the parties governing wages and working conditions of **yardmen** in the employ of respondent carrier, it is held that when said position became vacant September 7, 1936, it should have been bulletined per Article 14(f) cited in said Agreement."

Respondent Railroad Yardmasters of America contends that Yardmasters belong in the "miscellaneous group" (their brief p. 29). They have never been so grouped in any of the annual reports of the National Mediation Board. On the contrary, in the tables listing agreements between carriers and the unions representing the different crafts, they have been listed either under the general designation "Yard Service Employees" or, commencing with the Fourth Annual Report for the year ending July 30, 1938, under the specific heading "yardmasters" in column six. The "miscellaneous group" has followed the marine crafts in column twenty-four.

A reference to the specific crafts listed in the Interstate Commerce Commission Order of April 18, 1921, under the

heading "VI-a—Transportation (Yardmasters, Switchtenders and Hostlers)" shows the following divisions by "Division Number":

"126. Yardmasters and Assistants.
127. Switch Tenders.
128. Outside Hostlers.
129. Inside Hostlers.
130. Outside Hostler Helpers."

Division "VI-b—Transportation (Train and Engine Service)" includes reporting numbers 131 to 148 showing road conductors, freight conductors, firemen, and others. A comparison with the Official Index Digest to the Awards of the First Division of the Adjustment Board will show that the First Division has heard and decided disputes involving each and all the transportation operating crafts listed by the Interstate Commerce Commission under the titles in divisions VI-a and VI-b above set forth, including yardmasters. If it is adjudged that the First Division does not have jurisdiction of disputes involving yardmasters they will be *the only craft* under said transportation group VI-a and VI-b, or the "operating group," to be excluded!

CONCLUSION

It is respectfully submitted that the Railway Labor Act has been given a construction contrary to its plain terms and contrary to the clear intent of Congress. The judgment of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

V. C. SHUTTLEWORTH,
H. E. WILMARTH,
Cedar Rapids, Iowa.

EVERETT L. GORDON,
Chicago, Illinois

Attorneys for Order of Railway Conductors of America and Brotherhood of Railroad Trainmen, Petitioners.

LEO J. HASSENAUER,
Chicago, Illinois

Attorney for F. J. Williams, William Bishop, Paul M. Carter, M. J. Leach, and Fred J. Lewis, Petitioners.

W. A. ENDLE,
Cleveland, Ohio
Of Counsel.